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Supreme Court, U.S.
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No. _____

In The

Supreme Court of the United States

SHAHLA POURGHOLAM,

Petitioner,

v.

ADVANCED TELEMARKETING CORP., d/b/a AEGIS COMMUNICATIONS GROUP INC,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

PETITION FOR A WRIT OF CERTIORARI

SHAHLA POURGHOLAM
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May 2006

QUESTIONS PRESENTED

(1) Whether the court of appeals decision can overturn basic and previously well understood requirements for the review of administrative law knowing that a most basic tenet of administrative law is that when the court's decision is in contrary to existing laws, in contrary to the United States Supreme Court's precedent, in conflict with the decision of the other courts, in contrary to Fifth Circuit Court decisions, and that the decision is substantially disproved by the record, then it is the duty of the court to review, reverse, and remand the decision(s).

(2) TCHRA and Title VII of Civil Rights Act of 1964, as amended, states that an employer is liable for tangible and intangible damages for intentional infliction of emotional distress, discrimination, and disparate treatment based on the age, race, color, national origin, disability, religion, sex, sexual harassment, harassment, and retaliation, et seq. As such, does Aegis employment Policy and Practice of requiring (2.1) Employment Application; (2.2) Background Check, (2.3) Hiring Children seventeen years old or younger (16 years old); (2.4) Use of Mystery Caller and Quality Assurance by members of management from anywhere that a phone is available; (2.5) Sale of Local and International Child and Adult Porn through Aegis and/or Aegis Clients, (2.6) use of QA Conference Room which is secured with magnetic strip, (2.7) use of surveillance cameras and searches

while an employee is on Aegis property; and (2.8) retaliating, exposing and/or causing to be **exposed to partial nudity, prostitution, and hostile work environment while hiring Registered Sex Offender(s) and Criminal(s) as Agent(s) and/or Supervisor(s) in violation of Parole and in violation of** Texas Criminal Code of Procedure, Article 42.12, Texas Code of Criminal Procedure, Article 21.14(a); Texas Penal Code Chapter 20.02, 20.04(a)(4), 20, 21, 22, 30.02, 43.26, Texas Code of Criminal Procedure § 7 – § 7.01 (a); § 7.01 (b); § 7.01 (c), Texas Code of Criminal Procedure § 7.02 – § 7.02 (a)(2); § 7.02 (a)(3); § 7.02 (b); Federal Telecommunication Commission Rules, Sec. 64.1200, USCA 18 § 1503 and 1623 **violates** Plaintiff's State and Federal TCHRA and Title VII, as amended, U.S. Constitution. Fourth Amendment, and U.S. Constitution Fifth Amendment.

(3) USCA 18 § 1503 and 1623 as well as Texas Code of Criminal Procedure, Article 21.14(a) states that obstruction of justice and perjury before is unlawful. As such, can Aegis obstruct justice, commit perjury, and mislead the court and the jury about Plaintiff's Foley's Employment Record, Manpower Employment Record, Defendant's Relationship with Defendant's Expert(s) and Expert Witness (es), "Steen's" character, Irving Police Officer Mark Talley's misconduct in investigating Aegis and "Steen", Irving Police Officer Mark Talley's two charges of indecency with a child younger than fourteen years old; Irving Police Officer Miller use of excessive force against a Hispanic man during a traffic stop; Sale of Local and International Child and Adult Porn,

withholding the medical records of those that had forced abortion and/or were sent to psychiatric centers, presenting tampered audio tape as original tape to the court and the federal grand jury, withholding and destroying surveillance camera tapes that would prove sexual assault and/or harassment and/or other violations of federal and state laws, producing false alibis, withholding information about other discrimination complaints against Aegis, withholding information about Aegis direct and/or indirect insurance companies and their associated doctors, publicly defaming Plaintiff's character before the court and the jury; and causing Plaintiff's case and claims to be dismissed

LIST OF PARTIES

PETITIONER:
Shahla Pourgholam, Pro Se Petitioner, Appellant.

RESPONDENT:
Advanced Telemarketing Corp., d/b/a Aegis Communications Group, Inc.,

Alisa L. Pittman, Attorney for Respondent/Appellee
Advanced Telemarketing Group d/b/a Aegis Communications Group, Inc.

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As a condition of his parole Darryl Steen was not to go in, on, or about **where** children commonly gather**, nor shall he supervise** or participate in any program that includes as participants persons who are 17 years of age or younger.....6

Darryl Steen is not to **possess,** or to cause to **be purchased or** subscribed to, any literature, or videotapes **which** depict sexually explicit images**,** nude or partially nude people**, nor communicate or cause to communicate with a person for sexually explicit purposes through telecommunications or any other electronic means, including 1-900 services**.....6

Darryl Steen is not to cause to communicate with a person nude or partially nude **people**.....6

As a condition of his Parole Darryl Steen is not to own, posses, use, prohibited weapon or illegal weapon nor attempt or threaten to use any tool, implement **or object to** cause or threaten to cause any bodily injury.....6

As a condition of his Parole Darryl Steen is not to associate with persons of criminal background.....6

Darryl Steen was under mandatory Sex Offender Supervision and had to adhere to curfew **specified by his supervising parole officer**.....6

As a condition of his parole Darryl Steen is assigned to the highest level of supervision caseload.....6

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Darryl Steen is not to participate in any volunteer or volunteer any services **without prior Board Panel approval**.....6

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OPINION BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit that gives rise to this Petition has been designated for limited publication or is unpublished and it is reprinted in Appendix D hereto.

STATEMENT OF JURISDICTION

The date on which the United States Court of Appeals for the Fifth Circuit decided my case was on February 7th, 2006. Appellant's Petition for Panel Rehearing was postmark on February 21st, 2006. Appellant's case was dismissed because the court had quoted Defendant's assertion that the court and the jury had favored Defendant. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1). In accordance with Supreme Court Rule 13.1, this petition had been filed within 90 days of the date of the entry of the order on February 7th, 2001.

CONSTITUTIONAL PROVISIONS, STATUTES, REGULATIONS, DEFENDANT'S EMPLOYEMENT POLICIES AND PROCEDURES INVOLVED, AND "STEEN'S" TERMS AND CONDITIONS OF PAROLE

Federal Rules of Evidence 415 - Requires disclosure of history of Sexual Assault Convictions to the Jury. Particularly, if Defendant had lied or denied sexual assault convictions.

Relevant Portions of Texas Code of Criminal Procedure, Article 42.12 - It is unlawful for employers to hire Registered Sex Offenders if the company has hired children 17 years of age or younger because Registered Sex Offenders are not to be in/on/about where children 17 years of age gather nor Registered Sex Offenders are allowed to Supervise children 17 years of age or younger.

Relevant Portions of Texas Code of Criminal Procedure § 7 – § 7.01 (a); § 7.01 (b); § 7.01 (c) is reprinted at Pet. APP-K-43.

Relevant Portions of Texas Code of Criminal Procedure § 7.02 – Criminal Responsibility for Conduct of Another - § 7.02 (a)(2); § 7.02 (a)(3); § 7.02 (b) is reprinted at Pet. App-K-44.

Relevant Portions of Texas Code of Criminal Procedure, Article 21.14(a) – Perjury and aggravated Perjury before a grand jury is unlawful.

Relevant Portions of Texas Penal Code 20.02 and 20.02 – Kidnapping and unlawful restraint is unlawful.

Relevant Portions of Texas Penal Code 20.04(a)(4) – Aggravated kidnapping with the intent to violate the victim sexually is unlawful.

Relevant Portions of Texas Penal Code, Chapter 21 – Obscinity is unlawful.

Relevant Portions of Texas Penal Code, Chapter 22 – harassment and threats against an individual is unlawful.

Relevant Portions of Texas Penal Code 30.02 – Burglary with the intent to violate the victim sexually is unlawful.

Relevant Portions of Texas Penal Code 43.26 – Possession or Promotion of Child Pornography is unlawful.

Relevant Portions of Federal Telecommunication Commission Rules, Sec. 64.1200 – transmission of obscine material through telecommunication devices are unlawful.

TCHRA and Title VII of Civil Rights Act of 1964, Section 704 (a), 42 U.S. C. § 2000e-3(a), et seq; Section 706(g), 42 U.S.C. § 2000e-5(g); as amended. 42 U.S. C. § 1001 et, 42 U.S.C §2000e, et seq. 1964, 1983, 1991,42 U.S. C. § 2000e-5(f)(3), Tex. Lab. Code § 21.051 (1), et seq; the common law of the State of Texas, the Constitution of the State of Texas which is reprinted at Pet. APP-K-41 to K-42.

USCA 18 § 1503 and 1623 - Obstruction of Justice and Perjury before federal court and the federal grand jury is unlawful.

USCA 18 § 1518 - Tampering with evidence, Destruction of Evidence, Withholding evidence is unlawful.

Texas Local Rules, Section III – Attorney's – AT-8 (b) – Appointment of an attorney in Title VII Case.

Improper Argument – J- § 4, incurable harm caused due to egregious argument before the jury; § 5.1 incurable argument to the jury so prejudicial or inflammatory that an instruction to the jury to disregard it cannot eliminate its

harm; § 6 Injurious, unwarranted, and substantial prejudice for improper remarks and false records presented to the jury.

Federal Rules of Civil Procedure – Court Contempt – FRCP 45, Subpoena(s); FRCP 56, presenting Declarations in Support of Summary Judgment in bad faith; FRCP 53, Defendant's Witnesses failing to appear; FRCP 11 and FRCP 60 misconduct; FRCP 26 and 33 answers to interrogatories and request for production of documents; FRCP 37(c)(2) and 26(a) failure to admit and failure to disclose information; FRCP 37(b) sanctions for failure to provide requested discovery.

Relevant Portions of Federal Rules of Evidence 609(a)(1), 609(b) – Evidence that offers probative value "substantially" outweighs the prejudicial effect.

Relevant Portions of FRE 704. 705, 706 – Exclusion of Expert Witness Testimony.

Relevant Portion of FRE 801, defamation of character is unlawful.

Relevant Portions of FRE 101 to 1001, these rules will be reprinted only if there is a need to refer to them.

The Forth Amendment to the United States Constitution states in relevant part:

The right of the people to be secure in their person, papers, and effects, against unreasonable searches, shall not be violated.

The Fifth Amendment to the United States Constitution states in relevant part:

No person shall be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

Administrative Procedure Act, 5 U.S.C.§ 702, 703, 704, 706 in relevant part is reprinted at Pet. APP. K-42 to K-43.

Aegis Employment Polices and Procedures in relevant parts:

Aegis employee Policy to stop applicant to vote for unions because Aegis will continually will provide pay raise. [Also, please see R. #89].

Aegis employee policy to cut Plaintiff's pay. [Also, please see R. #45, #99, Page 281].

Aegis Employment Policy requirement to complete **employee application** as pre-employment and post-employment condition with Aegis and specifically question applicant if the applicant has ever been convicted of, pled guilty to, been placed on probation for, or been subject to deferred judication for a criminal offense and the explanation for such offenses. [Also, Please see Defendant Trial R. 101].

Aegis employee Policy requirement to process **background check result** before hiring applicants and to make applicant background check, character, mode of living, drug testing, and alcohol testing as pre-employment and post-employment condition of applicant's employment with Aegis. [Also, please see Appellant Record Excerpts, Exhibit 5, Page SP-77].

Aegis Employee Policy requirement that Aegis does hire children 17 years of age or younger. (Sixteen years old or younger). [R. #45, Page 566].

Aegis employee Policy that employees are not to share employee sign in IDs. [R. #45; R. 56, Exhibit 7, Page SP-88].

Aegis employee EEO Policy to treat employees like son, daughter, spouse, etc. [Plaintiff's Trial Exhibit 12, SP-89].

Aegis at Will Policy that causes support for Aegis internal corporate crimes. [R. #45, R #99, Trial R.166].

Relevant Police Reports from Defendant's Irving, TX facility is reprinted at Pet. App. Q-51.

Relevant Portions of Government Code § 508.187 – 62.102, Failure to comply with Registered Sex Offender Parole Requirements is unlawful.

Darryl Steen's Terms and Conditions of Registered Sex Offender as required by Texas Board of Parole are reprinted at Pet. App. L-45 to L-46. [Appellant R. Excerpts, Tab 11, SP-238, SP-239, SP-240; Please also see Appellant R. Excerpts, Tab 11, SP-479 and SP-480, Tab 11, SP-71, SP-72, SP-475, SP-242, SP-243—Charges for Child and Adult Porn].

STATEMENT OF THE CASE

This case arises from State and Federal TCHRA and Title VII of Civil Rights Act of 1964, as amended. On October 19th, 2001, Plaintiff timely filed her TCHRA charge of discrimination within 180 days, and Title VII charge of discrimination within 300 days with EEOC against her employer Advanced Telemarketing Corp., d/b/a Aegis Communication Group Inc. Aegis failed to take any remedial action even after Aegis had received Plaintiff's charge of discrimination **No**. 310A20130 and notice of the Right to Sue from EEOC.[1]

Thus, on December 19th, 2001, Ms. Pourgholam filed suit in federal district court against her employer, Advanced Telemarketing Corp., d/b/a Aegis Communications Group Inc for violation of her rights under State and Federal TCHRA and Title VII as amended.[2]

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[1] [R. #56, Exhibit 1, Page SP-1 to SP-9, Appellant's USCA Record Excerpts, Tab 4, Page SP-1].

[2] [R.1; R. 2, R. 3; R. 171, filed on 03/18/2005, R. #166, filed on 03/17/2005; R. #48, filed on 10/15/2002; R. #89, filed on 02/03/2004, R. 149, Page 2, top paragraph; discrimination based on Plaintiff's national origin, harassment by co-worker, retaliation, disparate treatment based on national origin, intentional infliction of emotional distress, discrimination in hiring, discrimination in demotion, discrimination in promotion, discrimination in termination, disparate treatment based on sexual harassment (sex), wrongful termination/constructive discharge of her employment effective September 27th, 2001, hostile work environment, and sexual harassment by her immediate supervisor Darryl Steen which was made a condition of Ms. Pourgholam employment and caused Ms. Pourgholam to suffer adverse employment condition; Darryl Steen was and is Under Mandatory Sex Offender Supervision and at the time that he Supervised Ms. Pourgholam].

During the time that Plaintiff was working for Defendant Plaintiff had asked to receive a copy of Surveillance camera tapes as well as audio and video tapes of the calls that Plaintiff had received **from April of 2001 to September of 2001** while **"Darryl Steen"** had been Plaintiff's **direct Supervisor**, in addition Plaintiff had reported to Aegis Human Resources Representative, Lisa Lewis, that Darryl Steen and DJ Williams were sexually harassing Plaintiff.[3] Defendant refused to produce these records. In addition, during the course of this case, Defendant had refused to fully and completely answers to Plaintiff's First Set of Interrogatories and First Request for Production of Documents. As such, Plaintiff had filed Motion to Compel Defendant to fully and completely answers to Plaintiff's First Set of Interrogatories and Production of Documents.[4]

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[3] [Plaintiff's USCA Record Experts, Tab 8, Page SP-56, Lisa Lewis's email on 07/06/2001 to Darryl Steen, David Walker, Mary Mullen, and Todd Baker, Lisa Lewis's Handwritten Notes, Tab 8, Page SP-53, Call from Trina Bitch, Tab 8, Page SP-54; Defendant's Trial Record, Exhibit 100, Handwritten Notes of Lisa Lewis, Pages ACG-00213, ACG-00215 on 07/06/2001, ACG226-00229 on 07/09/2001; Plaintiff's Trial Record, Exhibit #34, Call from Trina Bitch on 07/06/2001-ACG-00218 Call from Trina Bitch on 07/02/2001-ACG-0422, Call from customer with profane and abusive comments on 07/02/2001-ACG-00314, and Call from Rev. John Stillwell with calling card "Suck my dick" and "Fuck You" phone number 510-632-6733; Defendant's Trial Record, Exhibit #18, Plaintiff's Termination Review, Steen's Handwritten Notes on the bottom of the page, Plaintiff reported harassment, also Johnnie Reagler failed to report the harassment to authorities and the two did not use proper Termination Form, PAF Form, that requires Center Director's signature before termination.]

[4] [Please see R. Defendant's Appendix for Summary Judgment #45 on 09/30/2002, **Plaintiff's Motion to Compel, the district court record #48 and #49 filed on 10/15/2002, Plaintiff's Motion to Compel #89 on**

Moreover, the judge presiding in this case was changed from Honorable Judge Joe Kendal to Honorable Judge Barefoot Sanders. [Please see R. 8, filed on 01/24/2002]. Also the Court Reporter was changed from Joe Belton to Shawn McRoberts. [Please see R.170 filed on 03/17/2005; R 172, filed on 03/21/2005].

Furthermore, Plaintiff had requested for the Court to provide an attorney in this case so that this case could be adequately represented in the interest of Plaintiff's TCHRA and Title VII claims. [R 72 filed on 12/23/2002; and R 76, Order Granting Plaintiff's Motion to Appoint Counsel; Texas Local Rules, Section III – Attorney's – AT-8 (b) – Appointment of an attorney in Title VII Case].

In addition, Plaintiff did not accept Defendant's settlement offers because it was not assuring Plaintiff that Defendant would not commit acts in violation of TCHRA and Title VII in the future. [R. 88, on 01/13/2004; R. 111, on 06/15/2004]. Therefore, Defendant obstructed justice, committed perjury, withheld evidence, destroyed evidence, tampered with evidence, defamed Plaintiff's character in order **to deprive** Plaintiff's rights under State and Federal TCHRA and Title VII, as amended, to cause Plaintiff's case to be dismissed in part through partial summary judgment and in part through a misled federal grand jury's verdict.[5]

02/03/2004, Defendant's Second Motion for Summary Judgment filed on 02/25/2004, #97 - #99; each time Plaintiff had requested discovery, Defendant had submitted Defendant's Motion for Summary Judgment in order to avoid producing the requested discovery].

[5] [Please see the district court record #45 and R. #99; R. #48 and #89, R. #149, Page 2, Top paragraph, district court's Order directing

Plaintiff timely appealed this case to the Court of Appeals for the Fifth Circuit. [R. 180, filed on 03/25/2005, Notice of Appeal, and R. 04/23/2005, Notice of Amended Appeal]. The question that Appellant had presented to the Court of Appeals for the Fifth Circuit was whether Defendant could obstruct justice, commit perjury, and mislead the court and the jury and cause Plaintiff's causes of action to be dismissed. However, on February 7th, 2006, the Court had dismissed each/all Plaintiff's claims. The Court of Appeals for the Fifth Circuit affirmed the district court decision(s), holding for the first time that Plaintiff's case is **frivolous** because the court and the jury had **favored** Defendant.[6]

Defendant to produce Darryl Steen and David Walker's employee application and background check or conform to rule 34 that Defendant does not have such records in its possession; R #166, Plaintiff's Amended Pretrial Order, Plaintiff's objection to Defendant's defense agreement as to stipulated facts, exhibit list, and jury instruction in R. #159, R. 161, R. 162, R. 163 as well as R. 153, R. 158, R. 165; ROA, USCA5 Records, Pages 960 to USCA 981, Plaintiff's Exhibits USCA 960 to USCA 965 top half of the Page, Defendant's Exhibits bottom half of page USCA 965 to USCA 981; Defendant had entered into defense agreement with Plaintiff's attorney to "Label", and actually not follow the Federal District Court Order for a Joint Exhibit List Number; R. 152 filed on 01/12/2005].

6 This is despite the fact that the Court of Appeals for the Fifth Circuit in Schweitzer v. Advanced Telemarketing **did not hold that the jury had favored Schweitzer, but over turned the Jury's Verdict and granted Advanced Telemarketing d/b/a Aegis Communications Group a new trial because the jury's verdict was against Aegis and the jury had awarded attorney's fees to Schweitzer.** On return with special instructions, Schweitzer lost her lawsuit and her case of age discrimination was dismissed; Please see Pet. APP II. Page, R-52].

On February 21st, 2006, Appellant had sent her Petition for Rehearing en banc and Motion to file Appellant Petition for Rehearing en banc Out of Time. The Court of Appeals had **Granted** Plaintiff's Motion to file her Petition for Rehearing en banc Out of Time and requested that Plaintiff provide statement of facts and references for Appellant Petition for Rehearing en banc that had already been sent to the Court of Appeals for the Fifth Circuit. However, the Court of Appeal failed to recognize that due to hurricane Katrina and hurricane Rita, Plaintiff did not receive each/all ROA Records. As such Plaintiff had to submit Appellant Brief, Appellant Reply Brief, and Appellant Petition for Rehearing en banc without having access to each/all original ROA Records. Indeed, the courtroom transcripts were made available in August of 2001. [R. 199, R. 200, R. 201, R. 202, R. 203]. In addition, the trial records and other ROA materials were received in New Orleans on September 5th, 2005, after the City of New Orleans was evacuated.[7] [R. 204; R. 205].

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7 [As a matter in fact, the office of the clerk of the court did not reopen until December 21st, 2005, which at that point the clerk of the office could not locate the boxes because the clerks of the office were overwhelmed with the move from Houston, TX to New Orleans, LA. Then, the court closed for holidays until January 9th, 2006 at that point the case was in court and Plaintiff could not obtain original ROA records. Plaintiff had made several requests to receive original ROA records; R. 189, Plaintiff's correspondence to the court reporter regarding Court Transcripts; R. 190, Plaintiff's First Amended Notice of Appeal filed on 04/23/2005. Furthermore, on March 13th, 2006, Appellant timely filed her Motion to Extend time to Amend Appellant's Petition for Rehearing en banc because one of the boxes of the records was sent to wrong address and Plaintiff had not received the ROA that were shipped on March 13th, 2006, in time to be able to Amend her Petition for Rehearing en banc in time. On March 24th, 2006, Plaintiff had received each/all ROA Records after the Court of Appeals deadline and after the Court of

REASONS FOR GRANTING THE WRIT, STATEMENTS OF GENUINE ISSUES OF MATERIAL FACTS, ARGUMENTS, AND AUTHORITIES

I. The Fifth Circuit Court of Appeals has decided important questions of federal law in conflict with relevant decisions of this court. The Supreme Court should settle these question(s):

Whether Aegis Policy and/or Practice of "Employment Application", "Background Checks", "Hiring Children under the age of 17 years old", "use of QA Conference Room which is secured with magnetic strip", "access to QA and Mystery Caller Systems from anywhere that a phone is available", " Sale of Local and International Child and Adult Porn through Aegis and/or Aegis Clients", **retaliating, exposing and/or causing to be exposed to partial nudity, and hostile work environment while hiring Registered Sex Offender(s) and Criminal(s) as Agent(s) and/or Supervisor(s) in violation of Parole and in violation of** Texas Criminal Code of Procedure, Article 42.12, Texas Code of Criminal Procedure, Article 21.14(a); Texas Penal Code Chapter 20.02, 20.04(a)(4), 20, 21, 22, 30.02, 43.26, Texas Code of Criminal Procedure § 7 – § 7.01 (a); § 7.01 (b); § 7.01 (c), Texas Code of Criminal Procedure § 7.02 – § 7.02 (a)(2); § 7.02 (a)(3); § 7.02 (b); Federal Telecommunication Commission Rules, Sec. 64.1200, USCA 18 § 1503 and 1623 **violates** Plaintiff's State and Federal

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Appeals Order on March 17th, 2006, that **denied** Appellant Motion to Amend Appellant's Petition with statement of the facts and references).

TCHRA and Title VII, as amended, U.S. Constitution. Fourth Amendment, and U.S. Constitution Fifth Amendment.

Whether the court of appeals decision can overturn basic and previously well understood requirements for the review of administrative law. This case is also worthy of the Court's review because the decision fundamentally changes the role of courts. The court has abounded the clear import of facts and existing laws and substitute the courts guess and favor for Defendant as the basis for exercise of the court's discretion and decision. If permitted to stand, the Fifth Circuit's decision will be a large step down a path that fundamentally undermines the proper role of judicial review in Title VII cases.

Furthermore, A Writ of Certiorari in this case is warranted because the Panel's decision is contrary to existing state and federal civil and criminal laws, in contrary to the United States Supreme Court's precedent, in conflict with TCHRA and Title VII as amended, in conflict with U.S. Const. Amendments IV and V, in conflict with Privacy Act, in conflict with the other Courts decisions, and of public importance. If the decision of the court is uncorrected, it will distort judicial review of Title VII Cases. Also, in this case Aegis "at will" policy is unconstitutional because it deprives Plaintiff of her basic rights.

In this case, the panel had issued two pages of opinions without any specific facts that Appellant's Case is frivolous as matter of law, lacking merit, should not set precedent, and should not be published. The panel's opinion lacks specific examination and reference to the issues of material facts and the law that Plaintiff had set forth in her Appellant brief pages 1-30; Appellant Reply Brief, Pages 1-

15; and Appellant Petition for Rehearing en banc, Pages 1-14. Furthermore, the panel's opinion lacks the functional and integral testing of substantial and conclusive evidence. Thus, the panel failed to address the key issues that appellant had presented to the court. It is undisputed that Plaintiff had presented evidences and arguments as to her claims such as **Plaintiff's quid pro quo sexual harassment case.**[8] Thus, the panel's decision that this case is frivolous is substantially disproved because the court's contradictory language does not support the evidences.

Furthermore, in the instant case, Defendant had requested the district court to grant expert discovery and additional discovery after the district court had granted Defendant Partial Summary Judgment on Plaintiff's claims. **The law is clear that summary judgment is only warranted when there are no genuine issues of material**

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[8] [Please see the district court record # 110, Page 8, the district court Order and Opinion as to quid pro quo sexual harassment in this case; and the district court's opinion as to retaliation in this case, # 110, Page 11; TCHRA; and "Title VII"; in addition, if the panel had found that Plaintiff had to be more specific about the references to the record, then the court should had allowed Plaintiff to access to Appendix for R.166, Plaintiff's Proposed Amended Pretrial Order's Exhibit List that were ought to be in New Orleans. The panel should have considered that due to hurricane Katrina and Rita, Plaintiff did not have access to each/all original ROA; in addition, the panel should have considered the fact that the city of New Orleans was evacuated for three to four months. If the panel could not find each/all original ROA that supports Appellant's conclusive and substantial claims, then the panel was obligated to reverse and remand its decision and allow to Plaintiff to receive ROA records and present Plaintiff's statements of case and references as the court had requested].

facts.[9] Thus, if Defendant needed more discoveries, then there were genuine issues of material facts in question. **Therefore, the panel's decision is inconsistent with standard of review that the Supreme Court had advocated.**

Moreover, **the panel stated** that Ms. Pourgholam appealed her case because **a jury's verdict unfavorable to Plaintiff. This statement of the panel is incorrect because the reason for Ms. Pourgholam appeal was** whether the district court had erred **when** accepted a **"misled" jury's verdict** against Ms. Pourgholam. The questions that Ms. Pourgholam had presented to the Court of Appeals for the Fifth Circuit was to determine whether Defendant can mislead the federal district court and the federal grand jury, to obstruct justice, to commit perjury, to withhold evidences, to tamper with evidences, to destroy evidences, to defame Plaintiff's character publicly before the court and the jury, and cause Plaintiff's case to be dismissed.[10]

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9 [Cleotex Corp. 477 U.S. at 327 106 S. Ct at 2555; Cleotex Corp. v. Cartrett., U.S. 317, 322, 106 S. Ct. 2548, 2552 (986); Cleotex Corp., 477 U.S. at 322-25, 106 S. Ct. at 2552-54].

10 [USCA 18 § 1503 and 1623, Relevant Portions of Texas code of Criminal Procedure, Article 21.14(a) – Perjury and aggravated Perjury before a grand jury is unlawful, obstruct justice, to commit perjury; Texas Code of Criminal Procedure Article 42.2 Section 13B,' Texas Penal Code Chapter 7, 20, 21 and 22; Federal Telecommunications Commission Rule 64.1200, other State and Federal laws; TCHRA and "Tile VII" as amended; Relevant Portions of Texas Penal Code 20.02 and 20.02 – Kidnapping and unlawful restraint is unlawful; Relevant Portions of Texas Penal Code 20.04(a)(4) – Aggravated kidnapping with the intent to violate the victim sexually is unlawful].

Thus, the panel had predetermined Plaintiff's case without applying functional and substantial integration test of conclusive evidence. For instance, based on Defendant's employee application and background check, Defendant knew that Darryl Steen was a Registered Sex Offender with two Conviction Felonies of Sexual assaults. One involving his own daughter by placing his penis in his daughter's mouth, F80-14083-IL while Darryl Steen was on parole he had sodomized his stepson, F86-70092-LM. [Appellant's record excerpts in support of Appellant's Brief, Exhibit 11, Pages SP-479 and SP-480]. However, Defendant had hired Darryl Steen a Registered Sex Offender knowing that Defendant had also hired children sixteen (16) years old and the fact that Defendant's EEO policy stated **that members of management** are to treat **employees like their daughter, son, and spouse.**[11]

Furthermore, Defendant had filed Motion in Limine and **Defendant knew** that **Darryl Steen was in violation of his parole while Darryl Steen worked for Defendant** because **Darryl Steen's Parole conditions requires "Steen" not to be in/on/about or participate in any program that included children 17 years old** or younger and "Steen" was not to **supervise** Children 17 years or younger.[12] However,

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[11] [District court record #45, Defendant's Appendix in support of Defendant's First and Second Motion for Summary Judgment, page 566; Plaintiff's Trial Exhibit 12, Page SP-89; Aegis Hiring Policy; Defendant's Trial Exhibit #101,Aegis Employment Application; Appellant USCA Record Excerpts, Tab 5, Page SP-77, Defendant's Background Check Result Policy Requirements; Aegis EEO Policy, Page 6-7 of this Petition; Texas Code of Criminal Procedure, Article 42.12, Section 13B, Texas Penal Code Chapter 7, 20, 21 and 22].

[12] [Plaintiff's direct supervisor, Darryl Steen's Terms and Conditions of Parole for two Sexual Assaults Conviction Felonies of First

Defendant had lied to the federal grand jury that Darryl Steen did not do anything inappropriate and that Darryl Steen was honest.[13]

In addition, the Panel had erred to adopt Appellee's Brief without considering that Defendant's Appellee's Brief was almost identical to Defendant's First Motion and Second Motion for Summary Judgment(s). As such Defendant's Appellee Brief was inaccurate because it did not include each/all conclusive and substantial evidences that had been obtained after the district court had granted partial summary judgment to Defendant. Thus, Defendant had failed to respond to Plaintiff's Appellant's Brief(s).

II. PETITIONER ISSUES ARE NOT MOOT; THE PANEL WAS OBLIGATED TO REVERSE AND REMAND THIS CASE

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and Second Degree Aggravated Sexual Assaults for placing his penis in his daughter's mouth and sodomizing his step-son, Appellant Record Excerpts in Support of Appellant's Brief, Exhibit 11, Pages SP-238, SP-239, and SP-240; R. the district court docket #45 and #99, Defendant First and Second Motion for Summary Judgment Page 566, Aegis hiring policy for children under the age of 17 years old; R. #153, Defendant Motion in Limine, R. #165, Defendant's Reply in Support of Defendant's Motion in Limine; Plaintiff's Trial Exhibit # 12, ACG-00618, SP—89, Aegis EEO to treat employees like your son, daughter, spouse, etc].

13 [TR 500 lines 20, 21, 22, and 23; TR 499, lines 13, 14, 15; USCA 18 § 1503 and 1623; Relevant Portions of Texas Code of Criminal Procedure, Article 21.14(a) – Perjury and aggravated Perjury before a grand jury is unlawful; Defendant obstructed justice and committed perjury; Improper Argument – J- § 4 and § 5; Texas Code of Criminal Procedure, Article 42.12, Section 13B, Texas Penal Code Chapter 7, 20, 21 and 22].

It is central to due process that the courts and agencies must consider relevant evidences.[14] The lead case interpreting the APA, requires that reviewing courts consider the *entire record* when determine whether the courts findings of fact are based on substantial evidence, "the court may not scour the record to find its own basis for decision." APA § 706 (2) (A), 5 U.S.C. § 706 (2)(A)(2000), the decisions must be reasoned and not arbitrary or capricious. The court does not do its duty when it merely decides upon a poor record; the panel should not dismiss this case on the false basis that there is no record, and the reviewing panel cannot supply a basis for a decision without specific references to the record.[15]

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[14] [See United States Constitution, Amendment IV and V; *Saunders v. Shaw*, 244 U.S. 317 (1917); Administrative Procedure Act ("APA"), Section 706, 5 U.S.C. § 706 (2000), APA § 554(c), 5 U.S.C. § 554 (c) (2000); the court shall give all interested parties opportunity for – (1) the submission and consideration of facts; *Universal Camera Corp. v. NLRB*, 340 U.S. 474 (1951)].

[15] [*Isbrandtsen Co. v. United States*, 96 F. Supp. 883, 892, (S.D.N.Y. 1951); Since the matters of this case involve violations of State and Federal TCHRA and Title VII, as amended, human rights, Constitutional Rights, State and Federal laws, FCC and FTC Rules and Regulations, Child and Adult Porn, threats with gun and assaults, pregnant employees that had forced abortions or were sent to Psychiatric Centers while working for Aegis and Aegis client(s), false advertisement, Obstruction of Justice and Perjury, and the fact that the relief is available; it would be appropriate for this court to grant Ms. Pourgholam Petition for A Writ of Certiorari so that the case can be totally reviewed with substantial and conclusive evidences; [Petition for A Writ of Certiorari, Pages1-30; Appellant Brief, Pages 1-30; Appellant Reply Brief, Pages 1-15; and Appellant's Petition for Rehearing en banc, Pages 1-14; *Walter Fuller Aircraft v. Rep of Philippines*, 965 F.2d 1375, 1380 (5th Cir. 1992); *Moses H. Cone Mem. Hosp v. Mercury Constr. Corp.*, 460 U.S. 1 (1983)].

III. WILLISTON BASIN AND SCHWEITZER CASES COMPEL A REVERSE AND REMAND

Williston basin Interstate pipeline Co. v. FERC, 165 F. 3d 54 (D.C. Cir. 1999) holds that where there is an exceptional situational or policy change the change must be applied to existing cases. The essence of Williston is that a remand is required where the court changes the basis for its decision because the decision-making cannot be arbitrary.[16]

The United States Supreme Court held in *Moses H. Cone Mem. Hosp v. Mercury Constr. Corp.*, 460 U.S. 1 (1983), that a case is immediately appealable as a final decision when the order terminates the case from federal district court. *Id*, at 10. Similarly, the Fifth Circuit has recognized that a final decision is appealable. As explained, this case is appealable because each/all interlocutory orders against Plaintiff in the district court and final decision(s) of the district court had terminated this case. The order appealed from conclusively determines the disputed question. Furthermore, Ms. Pourgholam appeal "resolves an important issue completely separate from the merits of the action." *Coopers*, 437 U.S. 468. "An order that amounts to a refusal

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16 [*Williston basin Interstate pipeline Co. v. FERC*, 165 f. 3d 54 (D.C. Cir. 1999); The Court of Appeals for the Fifth Circuit in Schweitzer v. Advanced Telemarketing did not hold that the jury had favored Schweitzer, but over turned the Jury's Verdict and granted Advanced Telemarketing d/b/a Aegis Communications Group a new trial because the jury's verdict was against Aegis and the jury had awarded attorney's fees to Schweitzer. On return with special instructions, Schweitzer lost her lawsuit and her case of age discrimination was dismissed].

to adjudicate the merits plainly presents an important issue separate from the merits." *Moses H. Cone,* 460 U.S. at 12. In the present case the review of the orders of the district court had been roadblock to final judgment. *Moses H. Cone,* 460 U.S. at 12 n. 13. The court's orders present an important issue completely separate from the merits of Plaintiff's claims. In addition, denial of immediate review would render impossible any review whatsoever.[17]

It is also important to note that in this case opposing counsel had made improper and inflammatory arguments in front of the jury in bad faith. This court has the power to grant a review of this case based on its appraisal of the fairness of the trial and reliability of the jury's verdict.[18]

Moreover, the district court judge erred in dismissing each/all Plaintiff's TCHRA's actions after April 22, 2001 and Title VII actions after December 23rd, 2000 for discriminatory suspension based on national origin, DJ Williams co-worker harassment, discriminatory

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17 [*Hines v. Artois,* 513 F.2d 726, 730 (5th Cir. 1976); *United States v. Garner,* 749 F.2d 281, 288 n.8 (5th Cir. 1985); *Cooper & Lybrand v. Livesay,* 437 U.S. 463, 468 (1978); *Firestone Tire& Rubber Co. v. Risjord,* 449 U.S. 368, 376 (1981); *Firestone,* 449 U.S. at 376; *Johnson v. Ford Motor Co.,* 988 F.2d 573, 582 (5th Cir. 1993)].

18 [Texas Criminal Code of Procedure, Article, 42.12, Texas Penal Code Chapter, 7, 20, 21, 22; prejudicial and incurable argument – J - § 4, § 5, and § 6; USCA 18 § 1503 and 1623; Relevant Portions of Texas Code of Criminal Procedure, Article 21.14(a) – Perjury and aggravated Perjury before a grand jury is unlawful; *Gray v. Bicknell.* 86 F.3d 1472, 1480, (8th Cir. 1996); *Smith v. Transworld Drilling Co.,* 773 F.2d 610, 612-613 (5th Cir. 1985); *Ruvalcaba v. City of Los Angeles.* 64 F.3d 1323, 1328, (9th Cir. 1996)].

suspension based on race, harassment based on national origin, harassment based on race, discriminatory discharge based on race, and failure to promote based on national origin.[19] Plaintiff will set forth that Plaintiff had received numerous Racist, Profane, and Sexually explicit phone calls from April to September of 2001; based on Lisa Lewis's email, Defendant knew that as of April, May, June, and July of 2001, Plaintiff reported that Plaintiff was receiving numerous racist, profane, and sexually explicit phone calls from Mystery Caller/Customer called "Trina Bitch", Rev John Stillwell's calling cards named "suck my dick" and "fuck you", and numerous other racist and profane calls.[20] In addition, according to Lisa Lewis's email EACH/ALL monitored calls forms had to be signed by Plaintiff; despite the fact that Plaintiff had requested a copy of video and audio

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[19] [Please see Plaintiff's USCA Record Excerpts, Tab 4 to Tab 17; also see district court's Docket Record #56, #166, #106, 107]

[20] [Plaintiff's USCA Record Experts, Tab 8, Page SP-56, Lisa Lewis's email on 07/06/2001 to Darryl Steen, David Walker, Mary Mullen, and Todd Baker, Lisa Lewis's hand written note, Tab 8, Page SP-53, Call from Trina Bitch, Tab 8, Page SP-54, Lisa Lewis's Handwritten Notes that Plaintiff had reported unlawful acts; Defendant's Trial Record, Exhibit 100, Handwritten Notes of Lisa Lewis, Pages ACG-00213, ACG-00215 on 07/06/2001, ACG226-00229 on 07/09/2001; Plaintiff's Trial Record, Exhibit #34, Call from Trina Bitch on 07/06/2001-ACG-00218 Call from Trina Bitch on 07/02/2001-ACG-0422, Call from customer with profane and abusive comments on 07/02/2001-ACG-00314, and Call from Rev. John Stillwell with calling card "Suck my dick" and "Fuck You" phone number 510-632-6733; Defendant's Trial Record, Exhibit #18, Plaintiff's Termination Review, Steen's Handwritten Notes on the bottom of the page, Plaintiff reported harassment, also Johnnie Reagler failed to report the harassment to authorities and the two did not use proper Termination Form, PAF Form, that requires Center Director's signature before termination].

of each/all profane, sexually explicit, and racist phone calls that Plaintiff had received while Plaintiff was working for Defendant and under direct supervision of Darryl Steen (A Registered Sex Offender that Defendant had hired in violation of his Parole) as well as after Plaintiff had filed two Motions to Compel Defendant to Produce discovery; Defendant never produced the original audio and video tapes of these unlawful calls.[21] Indeed, Defendant also could not find it IRS tax records for revenues and profits that Defendant had made as a result of sales of Local and International child and Adult Porn; in addition, Defendant had entered into defense agreement with Plaintiff's attorney to not transcribe the call for 09/26/2001 and 06/18/2001 that was played in the open court.[22]

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21 [Please see Appellant's USCA Record Excerpts, Tab 8, Page SP 56; district court record # 47 on 10/15/2002 and R. #89 on 02/03/2004 Plaintiff's Motion to Compel Defendant to respond to Plaintiff's First Se of Interrogatories and First Request for Production of Documents; Distric Court Record #149. dated January 10th, Page 2, Top paragraph, Defendan had informed the court that Defendant could not find the records Plaintiff's USCA Record Excerpts, Page SP-728, SP-727, Courtroon transcript - Plaintiff's objection because Aegis had produced tampere audio tape without the video portion of 09/26/2001 call and Aegis did no produce the audio and video tape of Patricia Edwards; R. 166, Defendan had not produced each/all racist, obscene, sexually explicit, and profan calls that Plaintiff had received while Plaintiff was working for aegis an under direct Supervision of Darryl Steen. Based on Ms. Patricia Edward Request, Plaintiff had credited Ms. Edward's account for charges of rude destructive, and unwanted child and adult porn. Based on Ms. Edward' request, Plaintiff had also blocked access to unwanted porn access However, Darryl Steen and Defendant had denied this credit; Relevan Portions of Texas Penal Code 43.26 – Possession or Promotion of Chil Pornography is unlawful; Texas Criminal Code of Procedure chapter 7 20,21, and 22].

22 [Please see Appellant's USCA Record Excerpts, Tab 11,Page SP-242.and SP-243, Sale of Local and International Child and Adul

Furthermore, Defendant's attorney had entered into defense agreement with Plaintiff's attorney to mislabel and produce the calls that Plaintiff as a Supervisor had completed on Plaintiff's agents and the excellent ratings that Plaintiff had received for Plaintiff's coach and counseling skills from her agents, in order to confuse the court and the jury about the material facts of this case. [Defendant's Trial Record Exhibits #38].

In addition, according to Lisa Lewis's email, Defendant had to produce each/all calls from April 2001 to July 2001.[23] Moreover, according to Lisa Lewis's email, Darryl Steen had to present monitors to Plaintiff and Plaintiff had to sign the

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Porn, Tab 14, Pages SP-728 and SP-727, Plaintiff's Objection to the foundation and form of tampered audio tape for 09/26/2001 that Defendant produced to the jury; Texas Penal Code 43.26 – Possession or Promotion of Child Pornography is unlawful; Texas Criminal Code of Procedure, article 42.12; Texas Penal Code Chapter 7, 20, 21, and 22; – J - § 4, § 5, and § 6; USCA 18 § 1503 and 1623; Relevant Portions of Texas Code of Criminal Procedure, Article 21.14(a) – Perjury and aggravated Perjury before a grand jury is unlawful].

[23] [In addition, Defendant still failed to investigate; during discovery refused to produce the audio and video tapes of these calls, took no action against Darryl Steen, allowed Johnnie Reagler and Darryl Steen to use a Form other then PAF Form to terminate Plaintiff to avoid following Defendant's EEO Policy, to allow Johnnie Reagler and Ella Dickerson to sign on Plaintiff's termination without any investigation when Darryl Steen's Handwritten Note at the bottom of the Plaintiff's Termination Review had recorded Plaintiff reports "Harassment"; in order to avoid legal consequences of unlawful actions of Defendant that also had caused Plaintiff to suffer severe intentional emotional distress because from April of 2001 to September of 2001 Plaintiff had received racist, sexually explicit, profane, and absence phone calls while Plaintiff was working for Aegis and under Darryl Steen's Direct Supervision].

monitor forms before these calls could affect Plaintiff's performance negatively. [Appellant USCA Record Excerpts, Tab 8, Page SP-56]. In this case, Defendant did not produce signed monitor forms for 06/10/2001 and 09/26/2001 tampered audiotapes. [ROA, USCA5, Pages 960-981].

Then, Defendant had lied to the federal grand jury that Darryl Steen was honest and had nothing to gain while Defendant had hired Darryl Steen in violation of his Parole and "Steen's" Parole should have been revoked.[24] As such, Defendant's assertion of assuring Quality service is pretextual and unequivocally false.

Plaintiff has also set forth that on or about March 2001; Plaintiff was identified as a witness in Defendant's EEO investigation of sexual harassment in AT&T CS&S and CPP campaign. Plaintiff had admitted that she was sexually harassed because statements about sex and jokes about **sex** and **men's testicals** were told in the presence of Plaintiff.[25] Plaintiff was threatened and Plaintiff was told that she is not

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[24] [Please see Defendant's closing arguments, Page 499, lines 15, 16, 17; R. #45 and #99, Page 566, Paragraph D; Aegis had hired children 17 years of age and younger; Appellant's USCA Record Excerpts, Tab 11, Pages SP-242 and SP-243; Tab 11, Pages SP-71, SP-72, and SP-475, Darryl Steen had exposed Plaintiff to Partial nudity because he had chosen DJ to team lead out of dress code in Partially nude outfit; Texas Code of Criminal Procedure, Article, 7; Texas Penal Code Chapter 7, 21, 22].

[25] [Plaintiff's Trial Exhibit, #30 and #31; R. #56, Plaintiff's Opposition to Defendant's First Motion for Summary Judgment, Exhibit 4, Pages SP-40 and SP-41; R. #45 and #99, Page 464 and 465, ACG 00201 and ACG-00202, Appendix in Support of Defendant's First and Second Motions for Summary Judgments].

to talk to anyone beside Lisa Lewis.[26] As such, Plaintiff was discriminated against in violation of TCHRA and Title VII when Plaintiff was sent home without pay because Plaintiff's shoe did not have a strap in the back[27] In addition, between April 22, 2001 until September 27th, 2001, in several different occasions, including but not limited to June 10th, 2001 incident, Darryl Steen had allowed, DJ a co-worker, to team lead in partially nude out fit and out of dress code without sending DJ home.[28] In addition, Darryl Steen in violation of Defendant and AT&T's ID Policy when "Steen" had shared his Mystery Caller Systems and Quality Assurance Systems with DJ. Aegis took no action against

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[26] [Please see the district court's record #45, #99, Page 496, ACG-00192, Defendant's Appendix in Support of Defendant First and Second Motion(s) for Summary Judgment].

[27] [Please see the district court record #56, Exhibit, Page SP-37 and SP-38, Aegis Security Report about $500.00 Plaintiff's Stolen Money; Page SP-38, Aegis Security Report that one of Aegis employees had walked up to Plaintiff's face and told Plaintiff "Fuck You" twice; R. #45 and #99, Page 469; furthermore, Anita Boston trainer for AT&T had come to work out of dress code several times and she was not sent home.[27] However, $500.00 was stolen from Plaintiff in AT&T CS&S and CPP training class, then one of the students had left the training class and another Aegis employee had walked up to Plaintiff's face and told Plaintiff "Fuck You" twice].

[28] [Please see Plaintiff's USCA Record Experts, Tab 8, Page SP-56, Lisa Lewis's email on 07/06/2001 to Darryl Steen, David Walker, Mary Mullen, and Todd Baker; Plaintiff's USCA Record Excerpts Tab 11,Pages SP-71 and SP-72, Plaintiff's hand written note to Todd Baker and Darryl Steen; Defendant's Trial Exhibit #13, Plaintiff's Memorandum to Todd Baker and Darryl Steen on 06/10/2001; Lisa Lewis's hand written note Defendant's Trial Record, Exhibit 100, Handwritten Notes of Lisa Lewis, Pages ACG-00213, ACG-00215 on 07/06/2001, ACG226-00229 on 07/09/2001].

Darryl Steen and he didn't loose a day of pay; as such, Plaintiff was discriminated against, wrongfully terminated, and constructively discharged in violation of Title VII.[29]

Similarly, in April of 2001, Plaintiff had applied for Help Desk Position and Team Development Leader Position. Again, even though Plaintiff had the highest quality assurance score on the team and Defendant's own record shows that Plaintiff was excellent in processing adjustments, Plaintiff was denied promotion to help desk and Team Development Leader position(s) because Defendant retaliated against Plaintiff for the fact that Plaintiff would assure customer service and satisfaction by issuing credit to customer's that were charged for rude and unwanted Child and Adult Porn that were popping up on their computer while customer's were surfing on the internet[30].

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29 [Please see Plaintiff's USCA Record Excerpts, Tab 11, page SP-72; Tab 8, Page SP-56, Lisa Lewis email on 07/06/2001, etc; TCHRA, Title VII].

30 [Please see Plaintiff's Trial Exhibit #57, Handwritten Notes of Lisa Lewis that Plaintiff is very good at issuing adjustments; Plaintiff's USCA Record Excerpts, Tab 11, Page SP-50, as of 06/17/2001, Plaintiff had the highest Quality Score, Plaintiff's USCA Record Excerpts Tab 11, Pages SP-242 and SP-243, Defendant retaliated against Plaintiff for the fact that Plaintiff had issued credit to customer's that were charged for rude and unwanted Child and Adult Porn; Plaintiff's USCA Record Excerpts, Tab 10, Page SP-15, Plaintiff received letter of recommendation as a Supervisor from her Operation Manager Cyndi Kruger, SP-197, Frankie Reese had demoted Plaintiff on 07/11/2000; SP-448 Frankie Reese had promoted Darryl Steen to Plaintiff's Supervisor Position; Plaintiff's USCA Record Excerpts, Tab 11, Pages SP-238, SP-239, and SP-240, Darryl Steen's Terms and condition of his Registered Sex Offender forbids Darryl Steen to Supervise or be on/in/about children 17 years or younger; R. #45 and #99, Page 566, Paragraph D, Defendant employee handbook that Aegis does hire children 17 years or younger;

Accordingly, Plaintiff meets her burden of *prima facie case and Defendant's pretextual reasons* for discriminating against Plaintiff in violation of Title VII because in the instant case Plaintiff had established prima facie case and presented evidences that Defendant's reasons were a pretext for unlawful discrimination. Plaintiff had established that (a) Plaintiff was member of protected class(es); (b) Plaintiff was clearly qualified for her position; (c) Plaintiff was wrongfully and/or constructively discharged, demoted, and denied promotion; (d) after Darryl Steen had Terminated Plaintiff, Defendant had never disclosed and failed to submit in Defendant's First and Second Motions for Summary Judgment and at the trial of this case that the person that Defendant had hired to replace Ms. Pourgholam was an Iranian female. (Defendant acted in a manner to indicate that the decision(s) against Ms. Pourgholam was based on her national origin).

Furthermore, Defendant obstructed justice and defamed Plaintiff's character because Defendant took advantage of Defendant's Motion in Limine **to eliminate** evidences from the federal grand jury.[31] Thus, Plaintiff had

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R. #45 and #99, Pages 556, 557, and 558; specifically page 558 on the top paragraph is showing that Plaintiff has remarkable coach, counseling, and development skills; Please see R. #45 and #99, Page 559; on the same day 02/27/2000, Defendant had presented two Supervisor Performance Reviews of Plaintiff by Frankie Reese, One has an overall score of Meeting Expectation and on the other Plaintiff had Exceeding Expectation; Plaintiff's USCA Record Excerpts, Tab 10, SP-15, Plaintiff received letter of recommendation as a supervisor from her Operation manager Cyndi Kruger; Defendant's Trial Exhibit #38, after monitoring, Plaintiff's agents had highly rated Plaintiff's coaching].

[31] [R. #171, Order on 03/18/2005, Second Page, Paragraph (1), (2), (3), (4), and (5); Benners v. Blanks Color Imaging, Inc., S.W.3d-, 2004

established that: (a) Defendant acted intentionally or recklessly toward Plaintiff; (b) Defendant's conduct was extreme and outrageous; (c) Defendant's actions caused Plaintiff severe emotional distress; (d) the emotional distress suffered by Plaintiff was severe. **Therefore, Plaintiff meets her burden of to show *severe Intentional Infliction of Emotional Distress.***[32]

Daubert, provides the analytical framework for

WL 937902, at * __ (Tex. App.-Dallas May 2, 2004) (no pet.h.).

[32] [In addition, in Defendant's Appellee's Brief, Defendant asserts, and/or applies, and/or confirms Plaintiff's claim that Defendant's direct and/or indirect associated hospitals; doctors, healthcare workers, and expert witness had misdiagnosed Plaintiff. [Appellee's Brief, Page 39; 52] As such, Defendant's conduct is sanctionable for publicly defaming Plaintiff's character in the presence of the court and in the presence of the jury. Defendant's defenses were false; Defendant had argued that Plaintiff did not have marks on her neck when she went to emergency room. [Appellee's Brief Page 44]. Plaintiff was prescribed medication for rash (marks) that were on Plaintiff's neck during this same visit. [Defendant's Trial Exhibit #113, Emergency Room visit on 02/13/02, doctor's instruction and medications prescribed, specifically shows medication for rash (marks on Plaintiff's neck); Similarly, **on Sunday 06/03/2001 at 8:30 pm at night,** Darryl Steen had signed off Plaintiff and took Plaintiff to Secured Quality Room for One-On-One session in an area that no one else was there and never return Plaintiff back to the phones. [Appellant's USCA Record Excerpts Tab 16, Pages SP-249, SP-241, SP-244, Particularly Page SP-244; Tab 17, Pages SP-474, SP-514]. On 06/05/2001, Dr. Michael Tran, Defendant's in network doctor had checked Plaintiff and misrecorded the date of the visit as "06/05/2007" and misreported the name of the company as "SBC", and misdiagnosed Plaintiff as psychosomatic. [Appellant's USCA Record Excerpts Tab 17, Page SP-514]. However, Dr. Tran in his deposition had said that the Plaintiff's painful vaginal bleeding on 07/31/2001 was due to prolonged antibiotics. [Plaintiff's Appendix in Support of R. #166]. As such Defendant's argument that Plaintiff was paranoid with psychotic features is untrue. [Appellee Brief, Page 43].

determine whether expert testimony is reliable, relevant, and admissible under rule 701, 702, 703, 704, 705, and 706 of the Federal Rules of Evidence. Daubert v. Merrell Dow Pharm., Inc., 509 U.S. 592-593, 579, 113 s. Ct. 2786, 125 L. Ed. 2d 469 (1993). The Court erred in not striking and excluding Defendant's Expert Witness after Defendant's attorney Alisa Pittman on Direct Examination of Dr./Mr. Kay Hale lied to the jury that Dr./Mr. Kay Hale had never met and never had any relationship with Defendant's Law Firm.[33] If Defendant's Expert Witness would lie and mislead the jury about this known fact than the federal district court and the federal grand jury could not rely on him to give an unbiased evaluation of Ms. Pourgholam and to help the trier of the fact(s) to understand the evidences in this case. As such, the Court cannot ignore Ms. Pourgholam stated basis.[34]

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[33] [Court room transcript Page 398, lines 18-20; TR Page 419, lines 7-10 and 20-21. district court's docket record # 58 in November 8th, 2002, Defendant's designation of Dr./Mr./Kay Hale; TR Page 69, line 11, Defendant's attorney's opening statement; TR 502, lines 6-9, Defendant's attorney's closing statement which both are quoting Mr./Dr. Kay Hale's biased diagnoses to mislead the federal court and the federal grand jury; Whether an expert's testimony is reliable is a fact-specific inquiry; Skidmore v. Precision Printing and Pkg., Inc., 188 F. 3d 606, 618 (5th Cir. 1999); Kumbo Tires Co. v. Carmichael., 526 U.S. 137, 147, 152, 0119 S. Ct. 1167, 143 L. Ed. 2d. 238 (1999); Bocanegra v. Vicmar Serv., Inc., 320 F. 3d 581, 584 (5th Cir. 2003); Moore v. Ashland chem., Inc., 151 F. 3d.269, 279 (5th Cir. 1998); Pipiton v. Biomatrix., Inc., 288 F. 3d, 243 (5th Cir. 2002);Dr./Mr. Kay Hale's] hypothesis, theory, and report was invalid and the district court erred in not striking and excluding Dr./Mr. Kay Hale's expert testimony for lack of sufficient grounding because his testimony did not offer accurate and significant statistical link between discrimination, hostile work environment, and severe intentional affliction of emotional distress on Ms. Pourgholam; Defendant's Trial Record Exhibit # 104, Mr./Dr./Kay Hale's report was invalid].

[34] *SEC v. Chenery Corp.*, 318 U.S. 80 (1943); *Burlington Truck lines v. United States*, 371 U.S. 156 (1962); *Motor Vechicle Mfrs. Assn v.*

CONCLUSION AND PRAYER

WHEREFORE, this petition for the writ of certiorari should be granted.

Respectfully Submitted,

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May 2006

State Farm Mut. Auto. Ins. Co., 463 U.S. 29 (1983); [the Panel's decision is contrary to existing laws, in contrary to the United States Supreme Court's precedent, in conflict with the decision of the other courts as well as Fifth circuit court's decisions, and is substantially disproved by the record; a most basic tenet of administrative law is that courts speak through their decisions; the ambiguity in the order requires remand, and the courts should not presume. When the court's decision is in error, it is the duty of the court to review, reverse, and remand so that the court can correct the errors, and not to decide it. In this case, there were reports of assaults at Aegis Irving, TX facility, there had been Officer Mark Talley's misconduct in investigating Aegis and "Steen"; Officer Mark Talley's two court of indecency with a Child; Irving Police Officer's Miller use of Excessive force against a Hispanic man during a traffic stop, David Walker 's Registered Sex Offender information; and Aegis failure to investigate and take any action against "Steen" after receiving Plaintiff's EEOC complaint and while Aegis knew that had hired Steen in violation of his Parole; Please see Appendix I and II in support of Petition for a Writ of Certiorari; Pet. App. II; K, L, M, N, O, P, Q, R, S, T, U, V].